IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.420 of 2006

Reserved on : July 10, 2007.

Date of decision: July 17, 2007.

Devi Ram **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Navlesh Verma, Advocate.

For the Respondent : Mr. Ashok Chaudhary, Additional Advocate General.

Surjit Singh, Judge

Appellant Devi Ram is aggrieved by the judgment of the trial Court, whereby he has been convicted of offence under Section 20(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985, and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.40,000/-, in default of payment of fine to undergo rigorous imprisonment for a further period of six months.

2. Prosecution case may be summed up thus. On 14.1.2006 some Police officials of Police Station, Solan, went towards Rajgarh road. PW-12 ASI Yashwant Singh and PW-4 Constable Chaman Lal were among them. Around 10 a.m. when the Police officials were present at a place near Senta Roza Hotel, Bus No.HP-14-2897 came from Pankafur side. The bus was got stopped for checking the passengers and their baggage. Two parties, one headed by PW-12 ASI Yashwant Singh and the other headed by one Sub Inspector,

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Whether reporters of the local papers may be allowed to see the judgment?

entered the bus. The party headed by PW-12 Yashwant Singh entred the bus from the rear window while the other party entered from the front window. PW-12 ASI Yashwant Singh associated with him Constable Chaman Lal (PW-4) and another Constable named Sita Ram and started doing checking of passengers and their baggage from the rear side. Appellant was occupying seat No.30. On seeing the police, he got frightened and started trembling. That aroused the suspicion of PW-12 ASI Yashwant Singh that the appellant might be carrying some contraband. So, he told him that it was intended to search his person and in case he so desired search could be conducted in the presence of a Magistrate or Gazetted Officer. The appellant opted to be searched on the spot. PW-12 ASI Yashwant Singhs then associated with him two passengers, namely PW-1 Bhag Singh and PW-2 Ajit Singh, as also the conductor of the bus PW-3 Surjeet Singh, as independent witnesses of search. Constable Sita Ram and Constable Chaman Lal (PW-4) were already with him. The appellant was having a bag with him, which he had kept on his thighs. The bag was opened and it was found to contain a polythene bag in which there was *Charas* in the shape of balls and sticks, which on weighment was found to be 800 grams. Two samples, each weighing 25 grams, were separated. The samples and the bulk *Charas* were made up into three separate parcels. The parcels were sealed with a seal which produced the impression of letter ‘T’ of English alphabet. One of the two samples was lateron sent to the Chemical Examiner, who reported that it contained contents of *Charas*, because it had 32.55 per cent resin.

3. Appellant was put on trial by the trial Court, because he pleaded not guilty to the charge. On the conclusion of the trial, the appellant was convicted and sentenced as aforesaid.

4. Learned counsel representing the appellant argued that none of the three independent witnesses supported the prosecution version and that the testimony of the Police officials, namely PW-12 ASI Yashwant Singh and PW-4 Constable Chaman Lal, was contradictory and full of infirmities and, hence, not believable.

5. I have gone through the record and considered the submissions made on behalf of the appellant. The three independent witnesses, namely two passengers, PW-1 Bhag Singh and PW-2 Ajit Singh, and the conductor of the bus PW-3 Surjeet Singh, did not support the prosecution case and were, therefore, cross-examined by the prosecution with the leave of the Court. They were confronted with their statements under Section 161 of the Code of Criminal Procedure. They stand contradicted by the aforesaid statements and, therefore, their evidence is not of much help either to the prosecution or the defence.

6. PW-12 ASI Yashwant Singh and PW-4 Constable Chaman Lal very categorically stated that the appellant was occupying seat No.30 and that he had on his thighs a bag which contained *Charas* in the shape of balls and sticks and on weighment the *Charas* was found to be 800 grams. They have also stated that two samples, each weighing 25 grams, were separated and the samples and the bulk *Charas* were made up into separate parcels and all the parcels were sealed with a seal that produced the impression of English letter ‘T’.

7. Learned defence counsel stated that the testimony of the two witnesses was full of contradictions. The contradictions pointed out by him are:

a) PW-4 Chaman Lal says that the bus was 42 seater, but ASI Yashwant Singh (PW-12) says that the last bench of the bus where the conductor sits was eight seater and the other benches were three seater and 2 seater, which fact suggests that the bus had more than 32 seats.

b) PW-4 Chaman Lal says that the appellant was sitting on a two seater bench but PW-12 Yashwant Singh says that he was sitting on a three seater bench.

c) PW-4 says that the bus was taken to the Police Station but PW-12 Yashwant Singh says that it was not taken to the Police Station.

All these contradictions are too minor to be taken note of. They do not create any doubt, leave alone any serious doubt about the correctness of the prosecution version.

8. It was also pointed out that while according to PW-4 Constable Chaman Lal, he went to the Police Station with the report Ex. PW-9/B for the formal registration of the case at 1.15 p.m., according to PW-9 SI Bhupinder Singh, who recorded the FIR Ex. PW-9/C, on the basis of this report, PW-4 reached the Police Station with the report at 4.35 p.m. The submission is not correct. As a matter of fact on the FIR Ex. PW-9/C itself, the time of the receipt of the information at the Police Station is recorded as 1.15 p.m. and the time of the entry of the report in the Daily Diary is also recorded as 1.15 p.m. (13.15 hours). Moreover, PW-9 SI Bhupinder Singh has not stated that the report was received at 4.35 p.m. What he has stated is that on the same day at about 4.35 p.m. the case property together with NCB form,

in triplicate, was deposited with him by PW-12 Yashwant Singh. The relevant portion of the statement of PW-9 SI Bhupinder Singh, which is reproduced below, makes the things clear:

> "On 14.1.2006 Rukka mark XI now Ex.PW9/A was received by me through C Chaman from ASI Yashwant upon which I made endorsement Ex. PW9/B under my signatures. Thereafter I recorded FIR Ex.PW9/C at police station, Solan which is under my signature. Thereafter I handed over the case file through C Chaman Lal to ASI Yashwant Singh on the same day at about 4.35 PM The case property of this case i.e. sealed parcels duly sealed with seal impression T containing remaining bulk charas and sample of charas alongwith sample seal, NCRB form in triplicate was handed over to me by ASI Yashwant Singh I resealed the case property with reseal impression A and I also took specimen seal impression on piece of cloth Ex.PW9/D and also prepared certificate Ex.PW9/E under my hand and signatures."

9. A bare reading of the above reproduced portion shows that there should have been sign of full stop after the words "ASI Yashwant Singh" in the seventh line of the above reproduced portion of the statement of PW-9. The next sentence should have started with the words "On the same day at about 4.35 PM" and ended with the words "hand and signatures" appearing in the last line. It is apparent that the typist did not put the sign of full stop between the words "ASI Yashwant Singh" and "on the same day" in the seventh line and also wrote the first word of eighth line "The" with "T" as capital letter and this appears to have given the impression to the learned defence counsel that the witness stated that *Ruka* was received at 4.35 p.m. In fact what the witness has stated is that on the same day on which Chaman

Lal brought the *Ruka* for the registration of the case, ASI Yashwant Singh deposited the case property with him at 4.35 p.m.

10. Learned counsel for the appellant then submitted that the appellant was sent up for trial for possessing *Charas* and the *Charas*, as per definition contained in sub-clause (a) of Clause (iii) of Section 2 of the Narcotic Drugs and Psychotropic Substances Act, means resin, in whatever form, whether crude or purified, obtained from cannabis plant and also includes concentrated preparation known as Hashish oil or liquid Hashish. It has been submitted that in the present case, as per report of the Chemical Examiner, the entire sample stuff was not resin or say *Charas*, but only a part of it, to the extent of 32.55 per cent, was resin and, hence, the appellant cannot be said to be in possession of 800 grams of *Charas*. He says that what was in possession of the appellant was not whole *Charas* but something which included *Charas* (resin) to the extent of 32.55 per cent only and the rest of the stuff was some unknown substance about which report of the Chemical Examiner is silent. He has taken me through the report of the Chemical Examiner, per which the sample contained contents of *Charas.*

11. I find myself in agreement with the aforesaid submission of the learned counsel for the appellant. His submission is supported by the judgment, delivered by a Division Bench of this Court, in *Dharam Pal versus State of Himachal Pradesh and another appeal (Criminal Appeal Nos.491 & 510 of 2003),* decided on 15.5.2007. In the aforesaid case, it has been held that only the resin content of the stuff is *Charas* and that in the absence of the report of the Chemical Examiner about the rest of the contents of the stuff, the quantity of the *Charas*, based on the percentage of the resin found therein by the Chemical Examiner, is required to be worked out and the appellant-

accused is to be held responsible for possessing *Charas* only to the extent, the stuff contained the resin content in it.

12. As noticed hereinabove, the total quantity of stuff recovered from the appellant was 800 grams. The Chemical Examiner has found resin content in it to the extent of 32.55 per cent. That means the *Charas*/resin content in the recovered stuff was 260.40 grams. This quantity is less than the commercial quantity, as specified vide Notification No. S.O. 1055(E), dated 19th October, 2001, issued by the Central Government, even though more than the upper limit of the small quantity fixed by the same Notification. Thus, the appellant is liable to be punished under Section 20(B) of the Narcotic Drugs and Psychotropic Substances Act for which no minimum sentence is prescribed. The offence under Section 20(B) is punishable with imprisonment that may extend to ten years and with fine which may extend to Rs.1,00,000/-. Looking to the quantity of resin/*Charas* found in the stuff recovered from the appellant, I feel that the ends of justice would be met in case his sentence is reduced from five years rigorous imprisonment and a fine of Rs.40,000/- to three years rigorous imprisonment and a fine of Rs.20,000/- in default of payment of fine simple imprisonment for a further period of six months. It is ordered accordingly.

13. Appeal stands disposed of.

July 17, 2007(sd) **(Surjit Singh), J**